

DOLORES M. HEGGIE

IBLA 76-773

Decided December 20, 1976

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease W 50968-C.

Affirmed.

1. Oil and Gas Leases: Reinstatement—Oil and Gas Leases: Rentals

There is no basis for reinstating an oil and gas lease, terminated for failure to pay rental timely, because of alleged reasonable diligence when the payment was mailed no earlier than the date the rental was due.

2. Oil and Gas Leases: Reinstatement—Oil and Gas Leases: Rentals

An oil and gas lease terminated for failure to pay rental timely may not be reinstated where the delay in paying the rental was not "justifiable" within the meaning of the Mineral Leasing Act, 30 U.S.C. § 188(c) (1970), because it was due to financial and other difficulties not within the contemplation of the Act.

APPEARANCES: Anthony Scariano, Esq., of Anthony Scariano and Associates, P.C., Chicago Heights, Illinois, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

This appeal arises from the following circumstances relating to the annual rental payment on oil and gas lease W 50968-C. The payment was due in the Wyoming State Office, Bureau of Land Management (BLM),

on or before July 1, 1976, the anniversary date of the lease. No payment was received by BLM until July 6, 1976, when a check dated June 30th was received in an envelope postmarked July 2, 1976. ^{1/} The Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1970), provides that an oil and gas lease will terminate by operation of law if the annual rental is not received on or before the anniversary date of the lease. After receiving notice that her lease had terminated, appellant petitioned the Wyoming State Office, BLM, under 30 U.S.C. § 188(c) (1970) for reinstatement of the lease. This petition was denied by a decision dated August 10, 1976, from which she now appeals.

Reinstatement of the lease is authorized by 30 U.S.C. § 188(c) and the implementing regulation, 43 CFR 3108.2-1(c)(2), only if the failure to pay the rental timely was justifiable or not due to lack of reasonable diligence.

The basic reason afforded by appellant in her petition was a lack of money because she was unemployed and because of problems stemming from divorce proceedings which caused the financial difficulties and emotional stresses. The appeal refers to these problems and also contends appellant exercised reasonable diligence in mailing her payment prior to July 1, 1976. It also asserts she failed to receive the notice of payment due without substantial time to comply.

[1] We cannot find there was reasonable diligence in this case in view of appellant's own statement in her petition that she sent the payment on July 1 (see n.1) and the July 2d postmark on the envelope. Even if the payment had been mailed on the due date this would not have met the requirement of 43 CFR 3108.2-1(c)(2) which provides that "reasonable diligence" normally requires transmitting the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. Also, even assuming, arguendo, that the courtesy billing notice was sent late (a fact not shown by the record), this would not afford an excuse, since failure to receive any billing notice is no excuse. Louis J. Patla, 10 IBLA 127 (1973).

[2] We turn then to whether the lack of money and emotional problems alleged can be considered a "justifiable" excuse within the meaning of the statute. While we are sympathetic to appellant, the circumstances here do not fall within the statutory standard. As stated in Louis Samuel, 8 IBLA 268, 274 (1972):

^{1/} In her petition for reinstatement appellant indicated she made out the check on July 1 but had postdated it.

Congress by the word "justifiable" was adverting to factors ordinarily outside of the individual's control where the reasonable diligence test could not be met.

There is no specific showing of facts which would meet this standard, and they do not come within the type of circumstances contemplated by the Act. Financial difficulties and inability to pay at a certain time may not be considered as "justifiable" excuses under the Mineral Leasing Act. Frank Thompson, 24 IBLA 105 (1976); Faye A. Nicholas, 21 IBLA 69 (1975).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur.

Anne Poindexter Lewis
Administrative

Judge Douglas E. Henriques
Administrative Judge

